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6. Native American Indians are a unique racial group with a special relationship with the federal government and distinct environmental problems. Indian Tribes often lack the physical infrastructure, institutions, trained personnel and resources necessary to protect their members.

Native American people represent a unique sector of American society. The federal government has a unique trust relationship with tribal governments, based on original Treaties and subsequent legislation passed by Congress. Because of their unique political, historical, environmental and cultural status, the Workgroup decided to treat tribal populations separately for the purposes of this report.

In its review of environmental equity concerns with respect to Native American populations, the Workgroup raised the following issues:

- o Indian Tribes may be at a higher risk for certain pollutants than the average population due to subsistence practices, including high wild food and fish consumption rates.
- o While individual risks may be high on some reservations, Indian Tribes potentially may be overlooked in EPA's risk-based approach. Typically, Indian reservations have low populations with relatively large land areas, and population risk will often be small relative to other, especially urban, population groups.
- o EPA's risk analysis methodologies may not include factors (e.g., diet and other cultural practices) which accurately assess risk in Indian country.
- o Many Indian Tribes are substantially behind states in developing physical and institutional environmental protection infrastructure and often lack the technology that states possess to assess environmental problems.

1. **Wisconsin Tribal Comparative Risk Project**

To analyze these issues further on a case study basis, a comparative risk project was initiated for the eleven Indian Tribes in Wisconsin. The results of the project have important implication for equity concerns. Comparative risk studies employ a methodology which has been used at EPA and state and local agencies to identify environmental problems in a given geographic area and to rank those problems based on analysis of their

severity or risk. Varying numbers of environmental problem areas are ranked, including problems as diverse as pesticide exposures, indoor air quality, and drinking water contamination.

Typically three types of risk analyses are performed on each environmental problem: human health, ecological, and economic welfare. The human health analysis was modified to consider the very different pathways of exposure to environmental risks that Native Americans may face. The economic welfare analysis was modified to include damages to cultural and religious values and subsistence lifestyles. The list of environmental problems studied was modified to add food contamination as a separate problem. The analysis portion of the Wisconsin project was completed in a very short time frame to accommodate the schedule of the Environmental Equity Workgroup.

The results of this analysis show that the Tribes in Wisconsin face different risks than those faced by the population of the northern Mid-West as a whole. Food contamination from environmental sources was found to be the highest health risk facing the Tribes. Ecological risks were found to be caused mostly by long-distance transport of pollutants from outside the reservations. Finally, the influence of religious and cultural values significantly affected the economic welfare ranking.

One of the most striking findings of the Wisconsin project was that many of the current and future risks facing the Tribes could be reduced significantly if the Wisconsin Tribes had the physical, legislative/regulatory and institutional infrastructure and the environmental professionals to implement an environmental protection program. Many Tribes have limited staff, if any, who are knowledgeable on the technical and legal aspects of environmental matters. This lack of infrastructure means that the many Tribes have no effective way to manage environmental problems on reservations. This point has significant implications for environmental risks to Indian populations generally and for EPA Indian programs because, although the Wisconsin Tribes may differ from other Tribes in wild food consumption, religious and cultural values, and pathways of exposure, they differ little in infrastructure development.

See the Appendix, Sec. 4.0, for more information on Native American Indian Tribes.

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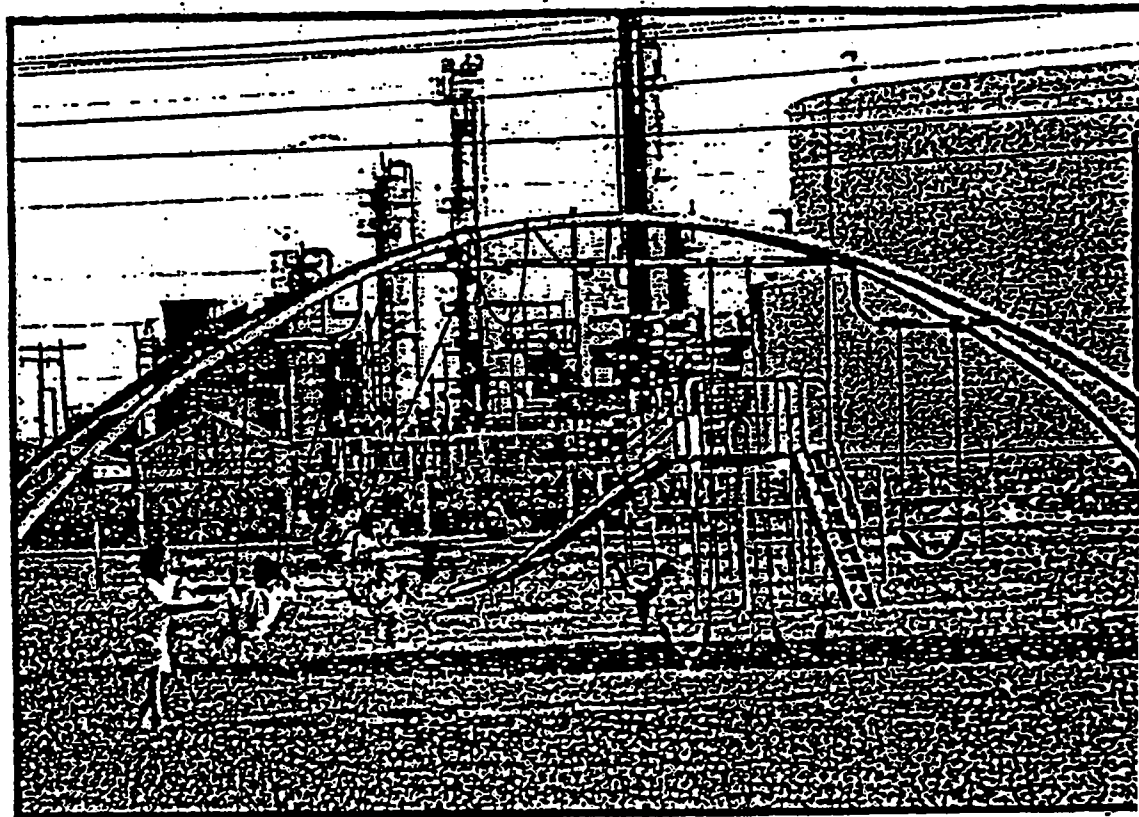
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Environmental Equity

Draft

Reducing Risk For All Communities



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Report To The Administrator
From The EPA Environmental
Equity Workgroup

CHAPTER ONE

INTRODUCTION AND EXECUTIVE SUMMARY

THE ENVIRONMENTAL AGENDA

Over the past twenty years, the United States has made considerable progress in protecting and cleaning up the environment. Many forms of air pollution are significantly reduced, many surface water systems have shown dramatic recovery and hazardous waste is better managed and contained. To achieve this progress, the nation has enacted major laws at the federal, state and local levels, established agencies to administer these laws and expended considerable sums to install and operate control equipment. Today there is also a growing movement throughout our society to prevent pollution before it is ever created, through changes in production and consumption practices.

This progress has brought important benefits to people in all communities. But many environmental problems remain. In many locations the air is still too polluted, the water is still too dirty and the land still bears too much uncontrolled waste. There are numerous efforts underway to identify, rank and clean up these problems. All communities have a direct interest in identifying, prioritizing, and addressing environmental problems.

ENVIRONMENTAL EQUITY

The U.S. Environmental Protection Agency (EPA) is continually attempting to refine its approach to environmental protection. Traditionally, environmental programs at all levels of government have set broadly applicable standards for individual pollutants emitted by specific types of sources with the goal of protecting the environment and all people. Recognizing that not everyone is affected in the same ways by pollution, these standards have often been set to protect the most susceptible, such as asthmatics or pregnant women.

Environmental protection has progressed from this initial strategy to include risk-based priority setting. The EPA Science Advisory Board, in its report Reducing Risk: Setting Priorities and Strategies for Environmental Protection, urged EPA to target its environmental protection efforts based on the opportunities for reducing the most serious remaining risks (EPA, 1990). In response, EPA began to examine and target its efforts on those environmental problems which pose the greatest risks nationwide.

to human health and the environment, using comparative risk analyses to rank environmental problems according to severity. One approach EPA now employs to prioritize environmental efforts based on risk is geographic targeting, where attention is focused on the problems faced by individual cities or regions, such as the Chesapeake Bay, the Great Lakes and the Gulf of Mexico.

In the context of a risk-based approach to environmental management, the relative risk burden borne by low-income and racial minority communities is a special concern. A low-income community which is surrounded by multiple sources of air pollution, waste treatment facilities and landfills and which has lead-based paint in the residences is clearly a community that faces higher than average potential environmental risks. A racial or cultural group whose children commonly have harmful levels of lead in their blood is also living with a greater environmental risk. Issues such as these, and how government agencies respond, have come to be known today as issues of *environmental equity*. Environmental equity refers to the distribution of environmental risks across population groups. While there are many types of equity, all of which are important to EPA, the term in this report refers specifically to racial and socioeconomic equity.

EPA has begun to consider how patterns of environmental problems converge on different places, how people who live in those places are affected and how environmental programs should be further refined to address identified differences. The causes of these differences are often complex and deeply rooted in historical patterns of commerce, geography, state and local land use decisions and other socioeconomic factors that affect where people live and work.

Environmental equity is important to those who might bear disproportionately high risks. But everyone has a stake in environmental equity because it results in better environmental protection generally. Environmental equity is an important goal in a democratic society. It involves a more equitable distribution of risks and an environmental policy-making process that allows the concerns of all communities to be heard, understood, and considered.

THE EPA ENVIRONMENTAL EQUITY WORKGROUP

In response to a variety of concerns raised by EPA staff and the public, in July 1990, EPA Administrator William K. Reilly formed the EPA Environmental Equity Workgroup with staff from offices and regions across the Agency. The Workgroup was asked to assess the evidence that racial minority and low-income communities bear a higher environmental risk burden than the

general population, and consider what EPA might do about any identified disparities.

In exploring how to define environmental equity, the Workgroup built on the Administrator's April, 1991 memo which stated, "The consequences of environmental pollution should not be borne disproportionately by any segment of the population." This report to the Administrator reviews existing data on the distribution of environmental exposures and risks across population groups. It also summarizes the Workgroup's review of EPA programs with respect to racial minority and low-income populations. Based on the findings from these analyses, the Workgroup makes initial recommendations. Because of the specific nature of the Workgroup's assignment, the report does not deal with other important related subjects, such as EPA's minority recruiting programs. It also does not repeat the work recently done by EPA's Minority Academic Institutions Taskforce (Final Action Plan completed in May, 1991) or the on-going work of EPA's Cultural Diversity Committee.

The report is intended to contribute to the national dialogue on environmental equity and to suggest further steps for EPA. It is a first step in the Agency's response to environmental equity concerns. There is also much that we still need to learn, through both internal study and public debate.

SUMMARY OF FINDINGS

1. There is a general lack of data on environmental health effects by race and income. Although there are clear differences between racial groups in terms of disease and death rates, there is an absence of data to document the environmental contribution to these differences. For diseases that are known to have environmental causes, data are not typically disaggregated by race and socioeconomic group. The notable exception is lead poisoning: A significantly higher percentage of Black children compared to White children have unacceptably high blood lead levels.
2. While there are large gaps in data on actual health effects, it is possible to document differences in observed and potential exposure to some environmental pollutants by socioeconomic factors and race. Exposure is not the same as health effects, but this finding is nevertheless a clear cause for concern.

3. Environmental and health data simply are not routinely collected and analyzed by income and race. Nor are data routinely collected on health risks posed by multiple industrial facilities, cumulative and synergistic effects, or multiple and different pathways of exposure. Risk assessment and risk management procedures are not in themselves biased against certain income or racial groups; however, improvements can be made in data collection procedures.
4. Great opportunities exist for EPA and other government agencies to improve communication about environmental problems with members of low-income and racial minority groups. The language, format and distribution of written materials, media relations, and efforts in two-way communication all can be improved. In addition, EPA can broaden the spectrum of groups with which it interacts.
5. There is a great deal of variation among EPA's program and regional offices in terms of how they address environmental equity issues. Case studies of EPA program and regional offices reveal that opportunities exist for addressing environmental equity issues and that there is a need for environmental equity awareness training. A number of EPA regional offices have initiated projects to address high risks in minority and low-income communities.
6. Native American Indians are a unique racial group with a special relationship with the federal government and distinct environmental problems. Indian Tribes often lack the physical infrastructure, institutions, trained personnel and resources necessary to protect their members.

SUMMARY OF RECOMMENDATIONS

Although large gaps in data exist, the Workgroup believes that enough is known with sufficient certainty to make several recommendations to the Agency. These recommendations are also applicable to other public and private groups engaged in environmental protection activities. The job of achieving environmental equity is shared by everyone.

1. EPA should increase the priority that it gives to issues of environmental equity.
2. EPA should establish and maintain information which provides an objective basis for assessment of risks by income and race, commencing with developing a research and data collection plan.

3. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across population, communities or geographic areas. In some cases it may be important to know whether there are any population groups at disproportionately high risk.
4. EPA should identify and target opportunities to reduce high concentrations of risk to different population groups, employing approaches developed for geographic targeting.
5. EPA should, where appropriate, selectively assess and consider the distribution of projected risk reduction in major rulemakings and Agency initiatives.
6. EPA should review and selectively revise its permit, grant, monitoring and enforcement procedures to address high concentrations of risk in racial minority and low-income communities. Since state and local governments have primary authority for many environmental programs, EPA should emphasize its concerns about environmental equity to them.
7. EPA should expand and improve the level and form with which it communicates with racial minority and low-income communities and should increase efforts to involve them in environmental policy-making.
8. EPA should establish mechanisms to ensure that environmental equity concerns are incorporated in its long-term planning and operations.

STRUCTURE OF THIS REPORT

This report presents the information collected by the Workgroup and its conclusions. Chapter Two describes the background, context, and assignment of the Workgroup and defines the issues examined in this report. Chapter Three presents the findings of the Workgroup. The Workgroup's recommendations are detailed in Chapter Four. Brief descriptions of already existing and planned EPA projects addressing various environmental equity issues are provided at the end of this document. Finally, the Appendix, which is a separate document, presents more detailed information on some aspects of environmental equity and contains extensive references and a bibliography. Sections in the Appendix are referenced throughout the main body of the text. For a copy of the Appendix, please contact the Office of Policy, Planning and Evaluation at (202) 260-5484.

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U.S. Environmental Protection Agency

Office of Federal Activities

Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses

April 1998

DISCLAIMER AND ACKNOWLEDGMENTS

The mention of company or product names is not to be considered an endorsement by the U.S. Government or by the Environmental Protection Agency. With the technical assistance of Science Applications International Corporation (SAIC), this document was prepared in partial fulfillment of EPA Contract 68-WE-0026, Work Assignment 72-IV.

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This guidance is intended to improve the internal management of EPA with respect to environmental justice under NEPA. It will not be deemed to create any right, benefit or trust obligation either substantive or procedural, enforceable by any person, or entity in any court against the agency, its officers, or any other person. Compliance with this guidance will not be justiciable in any proceeding for judicial review of agency action.

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1.0 PURPOSE

On February 11, 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Executive Order is designed to focus the attention of federal agencies on the human health and environmental conditions in minority communities and low-income communities. It requires federal agencies to adopt strategies to address environmental justice concerns within the context of agency operations. In an accompanying Presidential memorandum, the President emphasizes existing laws, including the National Environmental Policy Act (NEPA) should provide opportunities for federal agencies to address environmental hazards in minority communities and low-income communities. In April of 1995, the U.S. Environmental Protection Agency (EPA) released the document titled "Environmental Justice Strategy: Executive Order 12898." The document defines the approaches by which EPA will ensure that disproportionately high and adverse human health or environmental effects on minority communities and low-income communities are identified and addressed. It establishes Agency-wide goals for American Indian, Alaska Native, and other indigenous peoples (e.g., Native Hawaiian). It also establishes Agency-wide goals for environmental protection, and lists actions the EPA would take to incorporate environmental justice into its mission.

In August 1997, the EPA Office of Environmental Justice released the "Environmental Justice Implementation Plan." The Implementation Plan supplements the EPA environmental justice strategy. It provides estimated time frames for undertaking revisions, identifying the lead agents and determining the measures of success for each action item. Several EPA offices are developing more specific plans and guidance to implement Executive Order 12898 and this Agency-wide strategy.

This document serves as a guidance to incorporate environmental justice goals into EPA's preparation of environmental impact statements (EISs) and environmental assessments (EAs) under NEPA. The National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) serves as the Nation's basic environmental protection charter. A primary purpose of NEPA is to ensure that federal agencies consider the environmental consequences of their actions and decisions as they conduct their respective missions. For "major Federal actions significantly affecting the quality of the human environment," the federal agency must prepare a detailed environmental impact statement (EIS) that assesses the proposed action and all reasonable alternatives. EISs are required to be broad in scope, addressing the full range of potential effects of the proposed action on human health and the environment. Regulations established by both the Council on Environmental Quality (CEQ) and EPA require that socioeconomic impacts associated with significant physical environmental impacts be addressed in the EIS.

Environmental assessments have also become very important components of the NEPA process. Originally intended to serve as a mechanism for determining whether an agency's action was significant, thereby meriting an EIS, EAs are important analyses on their own. As a matter of policy, EAs completed by EPA regularly address socioeconomic effects associated with environmental impacts of Agency actions.

The purpose of this guidance is to assist EPA staff responsible for developing EPA NEPA compliance documentation, including EISs and EAs, in addressing a specific concern -- that of environmental justice. Because analyzing and addressing environmental justice may assist in determining the distributional effects of environmental impacts on certain populations, it is entirely consistent with the NEPA process. This guidance is intended to:

- heighten awareness of EPA staff in addressing environmental justice issues within NEPA analyses and considering the full potential for disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- present basic procedures for identifying and describing junctures in the NEPA process where environmental justice issues may be encountered;
- present procedures for addressing disproportionately high and adverse effects to evaluate alternative actions, and;
- present methods for communicating with the affected population throughout the NEPA process.

As seen throughout this guidance document, environmental justice issues can be and should be analyzed and addressed using many of the same tools currently intrinsic to the NEPA process.

1.1 Background

1.1.1 What is Environmental Justice?

Environmental Justice has been defined by a variety of organizations interested in the topic. EPA's Office of Environmental Justice offers the following definition:

"The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences

resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."

The goal of this "fair treatment" is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

1.1.2 Executive Order 12898

Executive Order 12898 and its accompanying memorandum have the primary purpose of ensuring that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations ..."(1) The Executive Order also explicitly called for the application of equal consideration for Native American programs. To meet these goals, the Order specified that each agency develop an agency-wide environmental justice strategy.

The Presidential Memorandum that accompanied the Executive Order calls for a variety of actions. Four specific actions were directed at NEPA-related activities, including:

1. Each federal agency must analyze environmental effects, including human health, economic, and social effects, of federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA.
2. Mitigation measures outlined or analyzed in EAs, EISs, or Records of Decision (RODs), whenever feasible, should address significant and adverse environmental effects of proposed federal actions on minority communities and low-income communities.
3. Each federal agency must provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities.
4. In reviewing other agencies' proposed actions under Section 309 of the Clean Air Act, EPA must ensure that the agencies have fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects.

As noted earlier, the purpose of this guidance is to assist EPA personnel in identifying and evaluating disproportionately high and adverse human health or environmental effects in minority communities and low-income communities within the context of NEPA documents prepared by EPA for actions which EPA complies with the procedural requirements of NEPA (e.g., research and development activities, facilities construction, wastewater treatment construction grants, EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources, and programs under the EPA Voluntary NEPA Compliance Policy), including instances where EPA satisfies its NEPA compliance obligation as a cooperating agency. It is also meant to improve the affected communities' access to the NEPA process.

1.2 Principles/Philosophy of this Guidance

This guidance highlights important ways in which EPA-prepared NEPA documentation may help to identify and address EJ concerns. The rationale and associated implications of the guidance will be

described in the remainder of this document. This section provides a summary listing of the major implications.

EPA officials should be vigilant in identifying where EPA actions may have disproportionately high and adverse human health or environmental effects on minority and/or low-income communities.

Identification should occur as early as possible, preferably during any initial screening exercise. The screening exercise should identify the presence of minority or low-income communities and whether such communities are likely to experience adverse environmental or human health effects as a result of proposed EPA actions.

The sensitivity to environmental justice concerns should sharpen the focus of the analysis. While the analytical tools to be used are similar, the analysis should focus both on the overall affected area and population and on smaller areas and/or communities within the affected area.

It is desirable that EPA NEPA analysts tasked with identifying and addressing environmental justice issues work as a team. This team should be comprised of an interdisciplinary staff that includes individuals familiar with environmental justice issues, public participation mechanisms and outreach strategies, Native American concerns and issues and who are experienced in the risk assessment process. Additionally, the team should consult with EPA's Regional Environmental Justice coordinators (refer to Appendix A), who are valuable resources in identifying local community groups among other functions.

Where proposed actions may affect tribal lands or resources (e.g., treaty-protected resources⁽²⁾, cultural resources and/or sacred sites⁽³⁾) EPA will request that the affected Indian Tribe⁽⁴⁾ seek to participate as a cooperating agency (40 CFR 1508.5). Where differences occur regarding the preferred alternative or mitigation measures that will affect tribal lands or resources, the affected Indian Tribe may request that a dispute resolution process be initiated to resolve the conflict between the tribe and the Agency.

Environmental justice concerns may lead to more focused analyses, identifying significant effects that may otherwise have been diluted by examination of a larger population or area. Environmental justice concerns should always trigger the serious evaluation of alternatives as well as mitigation options.

Identifying the "affected community" is particularly important. The effects of the proposed action will often vary depending on the distance of the affected community from the action and the type of effect created by the action (e.g., airborne or waterborne pollution, increased traffic, etc.). Effects on the community should be discussed in terms of reasonable increments from the site of the action.

Community involvement is particularly important in cases involving potential environmental justice issues. Early and sustained communications with the affected community throughout the NEPA process is an essential component of environmental justice.

For meaningful community involvement to be achieved in circumstances where environmental justice is an issue, technical assistance supplied by EPA should be available to the community to assist in their full participation (e.g., interpretation of scientific documents, development of alternatives or mitigation measures).

EISs and RODs, and EAs and FONSI (Finding of No Significant Impact) should document the analyses used to identify the presence or absence of disproportionately high and adverse effects and present the results of those analyses. The ROD and the FONSI should document the conclusion of these analyses

(i.e., whether the action will or will not have a disproportionately high and adverse effect on minority and/or low-income communities) and describe any mitigation that will be undertaken to avoid or minimize such effects.

1.2.1 EPA Actions Requiring NEPA Compliance

EPA is required to comply with NEPA for its research and development activities, facilities construction, wastewater treatment construction grants under Title II of the Clean Water Act and under certain Appropriations Acts, and EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources subject to new source performance standards. The Agency is exempted by statute for actions taken under the Clean Air Act and for most Clean Water Act programs. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), requires EPA to comply only with the substantive, not the procedural, requirements of other environmental laws for on-site responses. In the case of other EPA programs, the courts have found EPA procedures to be "functionally equivalent" to the NEPA process and therefore these EPA programs are exempt from NEPA procedural requirements. Also, EPA voluntarily prepares EISs for a number of actions pursuant to a long-standing statement of Agency policy.

Exhibit 1 identifies EPA's major program areas and indicates which actions are subject to NEPA, which Congress has exempted from NEPA, which have been found to be functionally equivalent to NEPA, and which receive NEPA-like analyses. This guidance is applicable solely to EPA programs and actions subject to NEPA and not those identified as "functionally equivalent" in Exhibit 1. However, this should not preclude its use as reference where "functionally equivalent" programs or actions processes may benefit from the information contained therein.

1.2.2 EPA Review of Proposed Actions Under Clean Air Act §309

As a result of §309 of the Clean Air Act, EPA has a key role in the overall implementation of NEPA. Specifically, §309 mandates that EPA "review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) to which Section 4332(2)(C) of this title applies [subject to Section 102(2)(C) of NEPA], and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review" (42 U.S.C. §7609(a)).

In conducting §309 reviews, EPA is further directed by the Presidential Memorandum that accompanied Executive Order 12898 to ensure that agencies fully analyze environmental effects of their proposed actions on minority and low-income communities, including human health, social, and economic effects. As a result of both §309 and the Presidential Memorandum, EPA is able to assist other federal agencies in evaluating proposed actions that are subject to NEPA by identifying possible environmental justice concerns that may result from such actions and by offering alternative solutions and mitigation measures for unavoidable impacts.

Although mention is made here of EPA's responsibilities under §309, this document is not intended to provide guidance for §309 reviews. EPA's §309 guidance should be used for that purpose. This guidance supplements the Council on Environmental Quality's *"Environmental Justice Guidance Under the National Environmental Policy Act"* and is tailored to EPA's conduct in actions for which EPA must comply with NEPA and where EPA has jurisdiction as a cooperating agency. It does not provide

guidance related to other federal agencies' actions or for EPA's review of other federal agencies' EISs.

1.3 Organization of this Guidance

The remainder of this guidance is organized as follows: **Chapter 2** describes key environmental justice terms and factors and the application of the key definitions and factors in the context of standard NEPA analyses; **Chapter 3** describes key steps in the NEPA process, including both EISs and EAs, where analyses of environmental justice concerns should be incorporated; **Chapter 4** discusses public participation approaches of direct relevance to minority and/or low-income communities; and **Chapter 5** provides a brief overview of methodological tools that can be used to identify and assess potential disproportionately high and adverse effects.

2.0 KEY TERMS AND FACTORS FOR CONSIDERATION IN EVALUATING

ENVIRONMENTAL JUSTICE CONCERNS

The purpose of this section is to introduce key terms and concepts to heighten the EPA analyst's awareness of how disproportionately high and adverse effects may be identified. The discussion is based on guidance prepared by a task force of the Interagency Working Group on Environmental Justice (IWG). The IWG was created by Executive Order 12898 and is comprised of the heads (or representatives) of 17 departments and agencies.

The identification and analysis of disproportionately high and adverse human health or environmental effects on minority communities and low-income communities should occur throughout the NEPA process, from the initial phases of the screening analysis through the consideration and communication of all alternatives and associated mitigation techniques.

In conducting an EPA NEPA analysis that is sensitive to environmental justice concerns, the inter-disciplinary team of EPA NEPA analysts should have an understanding of key terms central to environmental justice and should understand what factors need to be considered to ensure that all relevant concerns are identified and evaluated in a direct and explicit manner. The team should include experts familiar with available and appropriate public participation procedures and strategies and, where such concerns may arise, individuals familiar with the unique concerns of Native American Tribes and populations. Developing a keen sensitivity to potential environmental justice concerns and modifying the scope of the analysis can have a dramatic impact on whether environmental justice concerns are identified and addressed adequately and appropriately. Therefore, the EPA NEPA analyst must be sensitive to what issues and factors to look for to avoid the possibility that disproportionately high and adverse effects may be inadvertently missed, incorrectly characterized, or inappropriately minimized. So as to avoid potential oversights of environmental justice concerns, the EPA NEPA analyst should work closely with the affected community in drafting an EIS or EA, and where the community's concerns warrant, EPA should formalize this interaction (e.g., community advisory boards).

Appendix A includes the Council on Environmental Quality's (CEQ's) "Environmental Justice Guidance Under the National Environmental Policy Act" which incorporates the IWG-developed guidance on key terms in Executive Order 12898 that are pertinent to environmental justice analyses. That guidance was developed to assist federal agencies in conducting analyses of disproportionately high and adverse effects of their programs, policies, and activities. The guidance is not static but provides for informed judgment in every case; this means that EPA NEPA analysts will need to make careful decisions to ensure that environmental justice concerns are identified and addressed.

The remainder of this chapter is organized into two sections. The first section addresses terms that should be considered in identifying the existence of minority communities or low-income communities. The second section identifies factors that often are associated with disproportionately high and adverse effects, including cumulative and indirect impacts, on minority or low-income members of the larger community. Methodological approaches for conducting analyses appear in Chapter 5.

2.1 Defining Minority and/or Low-Income Population

The purpose of this section is to assist the analyst in determining whether there is a minority community or low-income community that may be addressed in the scope of EPA's NEPA analysis.

2.1.1 Minority and Minority Population

The first part of the guidance on minority population provided by the IWG provides a numeric measure: over 50 percent of the affected area. The remainder of the guidance calls for the analyst to use his or her best judgment in evaluating the potential for EJ concerns. It is important that the EPA NEPA analyst consider both the circumstances of any groups residing within the affected area, as well as the percentage of the affected community that is composed of minority peoples.

Within its guidance, the IWG explains that a minority population may be present if the minority population percentage of the affected area is "meaningfully greater" than the minority population percentage in the general population or other "appropriate unit of geographic analysis." The term "affected area," although not defined by the guidance, should be interpreted as that area which the proposed project will or may have an effect on. The IWG guidance also advises agencies not to "artificially dilute or inflate" the affected minority population when selecting the appropriate unit of geographic analysis. Clearly, a key element here is the selection of the appropriate level of geographic analysis; that is, selecting a comparison population to which the population in the affected area will be compared to identify if there are "meaningfully greater" percentages. The selection of the appropriate unit of geographic analysis may be a governing body's jurisdiction, a neighborhood census tract, or other similar unit. This is done to prevent artificial dilution or inflation of the affected minority population. In an EPA NEPA analyses, the analyst should use the potentially affected population under various alternatives as a benchmark for comparison wherever possible. In addition, a simple demographic comparison to the next larger geographic area or political jurisdiction should be presented to place population characteristics in context and allow the analyst to judge whether alternatives adequately distinguish among populations. For example, all preliminary locations for a project could fall in minority neighborhoods, therefore, a comparison among them would not reveal any population differences. Consequently, an additional alternative would be necessary to allow any disproportionately high and adverse effects to be identified.

The fact that census data can only be disaggregated to certain prescribed levels (*e.g.*, census tracts, census blocks) suggests that pockets of minority or low-income communities, including those that may be experiencing disproportionately high and adverse effects, may be missed in a traditional census tract-based analysis. Additional caution is called for in using census data due to the possibility of distortion of population breakdowns, particularly in areas of dense Hispanic or Native American populations. In addition to identifying the proportion of the population of individual census tracts that are composed of minority individuals, analysts should attempt to identify whether high concentration "pockets" of minority populations are evidenced in specific geographic areas.

The IWG guidance also advises agencies to consider both groups of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals, where either type of group "experiences common conditions" of environmental exposure or effect within the guidance

provided for minority population. This can result from cultural practices, educational backgrounds, or the median age of community residents (e.g., disproportionate numbers of elderly residents, children, or women of child bearing age may be more susceptible to environmental risks).

A factor that should be considered in assessing the presence of a minority community is that a minority group comprising a relatively small percentage of the total population surrounding the project may experience a disproportionately high and adverse effect. This can result due to the group's use of, or dependence on, potentially affected natural resources, or due to the group's daily or cumulative exposure to environmental pollutants as a result of their close proximity to the source. The data may show that a distinct minority population may be below the thresholds defined in the IWG key terms guidance on minority population. However, as a result of particular cultural practices, that population may experience disproportionately high and adverse effects. For example, the construction of a new treatment plant that will discharge to a river or stream used by subsistence anglers may affect that portion of the total population. Also, potential effects to on- or off-reservation tribal resources (e.g., treaty-protected resources, cultural resources and/or sacred sites) may disproportionately affect the local Native American community and implicate the federal trust responsibility to tribes.⁽⁵⁾

The EPA NEPA analyst should look at each situation on a case-by-case basis to determine if there may be disproportionately high and adverse effects on a minority population.

The EPA NEPA analyst should make every effort to identify the presence of distinct minority communities residing both within, and in close proximity to, the proposed project, and to identify those minority groups which utilize or are dependent upon natural resources that could be potentially affected by the proposed action. Non-traditional data gathering techniques, including outreach to community-based organizations and tribal governments early in the screening process, may be the best approach for identifying distinct minority communities and/or tribal interests within the study area. See Chapter 4 for a discussion of public outreach techniques.

2.1.2 Low-Income Population

This guidance recommends that pursuant to the CEQ guidance, low-income populations in an affected area (that area in which the proposed project will or may have an effect) should be identified with the annual statistical poverty thresholds from the Bureau of the Census' Current Population Reports, Series P-60 on Income and Poverty. In conjunction with census data, the EPA NEPA analyst should also consider state and regional low-income and poverty definitions as appropriate. In identifying low-income populations, agencies may consider as a community a group of individuals living in geographic proximity to one another or set of individuals (such as migrant workers or Native Americans) where either type of group experiences common conditions of environmental exposure.

As with the identification of minority communities, the level of aggregation of available data is an issue of concern when seeking to determine whether one or more low-income communities may be affected by a project. Also, as with minority communities, "pockets" of low-income individuals may be masked by aggregated data. The level of aggregation of data, as well as how current the available data are, should be taken into account by the EPA NEPA analyst.

Determining the existence and location of low-income and minority communities within the reaches of a projects' influence can be a difficult task. Several means of gathering this information are available; however, it is up to the EPA NEPA analyst to ascertain which techniques will best suit the project at hand. Further, the EPA NEPA analyst must be flexible and open to consider additional avenues which

must be a sufficient impact on the environment to be "significant" within the meaning of NEPA. Agency consideration of impacts on low-income populations, minority populations or Indian tribes may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked." CEQ requires that significance be evaluated in terms of "intensity" or "severity of impact." Here too, the narrowed focus could affect the determination. Several factors that affect the evaluation of intensity are relevant to situations involving environmental justice issues. These include the degree of scientific controversy, uncertainty (since distributional analysis is relatively new in the NEPA context and this introduces an element of uncertainty in impact assessment), and cumulative significance of related actions.

Environmental justice concerns should sensitize EPA NEPA analysts to the need to focus analyses on relevant contexts. Focusing the analysis may show that potential impacts, which are not significant in the NEPA context, are particularly disproportionate or particularly severe on minority and/or low-income communities. As mentioned previously, disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.

3.2.3 Scoping and Planning

Scoping consists of identifying and defining the range of actions, alternatives and impacts that will be considered in an environmental impact statement (40 CFR 1508.25). During the scoping phase of the EIS process, EPA must consider connected, cumulative and similar actions to the proposed action, identify alternatives to the proposed action that may mitigate or avoid potential environmental consequences, and assess potential impacts (direct, indirect, and cumulative). A similar planning process is used for EAs.

The identification of environmental justice concerns and the incorporation of these concerns into the scoping analysis can have implications for the nature and extent of the scoping analysis, the EIS and/or the EA.⁽⁹⁾ Indian Tribe representation in the process should be sought in a manner that is consistent with the government-to-government relationship between the United States and tribal governments, the federal government's trust responsibility to federally-recognized tribes, and treaty rights. This will help to ensure that the NEPA process is fully utilized to address concerns identified by tribes and to enhance protection of tribal environments and resources. As defined by treaties, statutes, and executive orders, the federal trust responsibility may include the protection of tribal sovereignty, properties, natural and cultural resources, and tribal cultural practices.

3.2.3.1 Incorporating Environmental Justice Concerns into EA Development

If the environmental justice screening analysis does not identify minority communities or low-income communities, and suggests no disproportionately high and adverse effects on those communities and/or on tribal resources, then the EA and FONSI should describe the analysis and note the conclusion.

If the initial screening analysis identifies an affected community that is minority and/or low-income or identifies a disproportionately high and adverse effect upon a minority community, and/or on tribal resources, or on a low-income community, then a smaller scale scoping analysis (than that undertaken for an EIS) should be conducted and some level of public participation should be designed and implemented to solicit community involvement and input, and to develop alternatives and mitigation measures. Mitigation measures should be developed and alternatives should be crafted so as to allow an evaluation of the relative disproportionality of impacts across reasonable alternatives. The EA also should include a comparative socioeconomic analysis that is scaled and tailored to evaluate the potential effects to the

Attachment

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AROOSTOOK BAND OF MICMACS / EPA AGREEMENT

An AGREEMENT between the

AROOSTOOK BAND OF MICMACS

and the

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

April 30, 1998

I. PREAMBLE

This agreement, dated April 30, 1998 is executed between the Aroostook Band of Micmacs, a sovereign Federally recognized government, and the United States Environmental Protection Agency (U.S. EPA) in order to better achieve mutual environmental-governmental goals in the government-to-government relationship between the Aroostook Band of Micmacs, a sovereign government, and the U.S. EPA. This Agreement provides the framework for a relationship in support of the President's April 29, 1994 directive and the Administrator's Indian Policy of 1984 and July 1994 on the government-to-government relationship which respects the governmental sovereignty of the Aroostook Band of Micmacs and all of the authorities and powers vested in its duly elected Chief and Council, and the U.S. EPA, including its Federal trust responsibility with Federally recognized Indian Tribes. This Agreement provides a framework for implementation of procedures and practices insuring implementation of that relationship between the Aroostook Band of Micmacs and the U.S. EPA.

Each party to this Agreement respects the unique legal status of the other party including the sovereignty of the Aroostook Band of Micmacs and the U.S. EPA. The U.S. EPA recognizes and respects the values and culture represented by the Aroostook Band of Micmacs.

To fulfill the intent of this Agreement, the Administrator's Representative, the Regional Administrator of the U.S. EPA will identify and seek to remove impediments to working directly and effectively with the Aroostook Band of Micmacs.

II. PARTIES

The parties to this Agreement include the U.S. EPA, represented by its Regional Administrator, and the Aroostook Band of Micmacs, represented by its Chief. This Agreement provides a framework for a government-to-government relationship between the U.S. EPA and the Aroostook Band of Micmacs.

III. PURPOSES AND PRINCIPLES

This Agreement confirms the commitment by the parties to implement a government-to-government relationship, to promote and build strong environmental protection in Indian Country. This relationship respects the sovereignty of the Aroostook Band of Micmacs and the United States, represented by the U.S. EPA. This Agreement further enhances and improves communications between the parties and facilitates resolution of issues of common concern.

This Agreement is intended to build confidence and trust between the parties in the government-to-government relationship outlining the process for implementing this Agreement. Not only is this process designed to implement an Agreement, it also is intended to "institutionalize" the spirit and principles within the organizations represented by the parties.

This Agreement also commits the parties to the initial task that will translate the government-to-government relationship into more efficient and improved actions, including short and long term planning and program implementation affecting the interest of the Aroostook Band of Micmacs. This agreement encourages and provides the foundation and framework for specific agreements between the parties outlining specific tasks to address or resolve specific issues of common concern. The U.S. EPA Administrator has also convened the Tribal Operations Committee,

within each other's organization is critical to the successful implementation of this Agreement. Therefore, the Chief and/or his designee and the U.S. EPA Regional Administrator will direct appropriate staff to follow the principles and guidelines of the Agreement in working with corresponding representatives.

In order to successfully implement this Agreement, the Aroostook Band of Micmacs and the U.S. EPA will each ensure that its organization, decision-making process and relevant personnel are known by the parties to the Agreement.

The long-term environmental goals of the Aroostook Band of Micmacs are to accomplish the following objectives.

Long-term environmental goals of the Aroostook Band of Micmacs:

A. ALL TRIBAL WATERS WILL BE CLEAN AND HEALTHY.

Assess, reduce risks, and protect Tribal waters and related aquatic and marine ecosystems:

Improve and protect surface water quality supporting Tribal uses;

Protect Tribal wetlands ecosystems from degradation;

Protect Tribal groundwater quality;

Improve and protect coastal water quality for Tribal use of aquatic and marine resources;

Develop Tribal scientific capacity for water resource monitoring, data management, data analysis, GIS mapping, and data sharing;

Improve and protect Tribal drinking water quality;

Increase tribal capacity for wastewater treatment;

- I. Direct implementation by the U.S. EPA and the Tribe to ensure protection of water resources;
- II. Institute water quality standards, enforcement, compliance, training and public awareness;
- III. Develop partnerships for Tribal water resources assessment, risk reduction, and protection, along with MOUs and MOAs.

EXHIBITS: A - WATER

B. ALL TRIBAL LANDS WILL HAVE CLEAN AND HEALTHY AIR.

Assess, reduce risks, and protect air quality affecting Tribal and ecosystem health:

Make the air safer to breathe;

Increase understanding of ambient air quality to assess risks;

Reduce toxic air emissions;

Develop partnerships for Tribal air quality assessment, risk reduction, and protection, along with MOUs and MOAs;

Develop Tribal capacity for air quality scientific assessment and necessary monitoring;

EXHIBITS: D - INFORMATION

E. POLLUTION PREVENTION ACTIVITIES THAT WILL ENSURE A POLLUTION-SAFE TRIBAL COMMUNITY.

Assess, reduce risks, and protect Tribal homes, workplaces, and ecosystems:

Reduce Tribal exposure to pollutants and toxics;

Institute pollution prevention practices protective of human and ecosystem health;

Develop Tribal capacity for pollution prevention;

Develop partnerships for Tribal pollution prevention, along with MOUs and MOAs;

Institute pollution prevention standards, enforcement, compliance, training and public awareness.

EXHIBITS: E - POLLUTION PREVENTION

F. NO WASTE, INDUSTRIAL, OR AGRICULTURAL SITES WILL THREATEN TRIBAL RESOURCES.

Assess, reduce risks, and protect Tribal resources from improperly disposed wastes and accidental spills:

Direct implementation by the U.S. EPA and the Tribe will ensure protection of Tribal resources from improperly disposed of hazardous wastes and accidental spills;

Develop tribal capacity to respond to accidental spills which threaten environmental quality;

Develop partnerships for risk assessment, risk reduction, protection, and clean-up of waste, industrial, and agricultural sites, along with MOUs and MOAs;

Institute waste disposal/cleanup standards, enforcement, compliance, training and public awareness.

EXHIBITS: F - WASTE

G. REDUCE ALL TRANSBOUNDARY RISKS TO TRIBAL HEALTH AND ECOSYSTEMS.

Assess, reduce risks, and protect Tribal resources from environmental problems that originate outside of Tribal lands/waters:

Develop partnerships for risk assessment, risk reduction, and protection, and from transboundary risks to Tribal health and ecosystems, along with MOUs and MOAs;

Develop and implement MOUs and MOAs with other governmental entities;

Implement nonpoint source environmental programs.

EXHIBITS: G - TRANSBOUNDARY

The relationship described in this Agreement provides increased ability to solve problems and may not result in resolution of all issues. Therefore, inherent in this relationship is the right of each party to evaluate an issue of importance to any decision-making authority of another party, including taking legal action.

Signatory parties have executed this Agreement on April 30, 1998, and agreed to be duly bound by its commitments.

Aroostook Band of Micmacs:


BY: Richard Getchell

TITLE: Chief

DATE: 4/30/98

U.S. Environmental Protection Agency:


BY: John P. DeVillars

TITLE: Regional Administrator

DATE: 4/30/98

HOULTON BAND OF MALISEET INDIANS / EPA AGREEMENT

**An AGREEMENT between the
Houlton Band of Maliseet Indians, a Federally Recognized Tribe
and the
United States Environmental Protection Agency**

I. PREAMBLE

This agreement, dated June 07, 1999, is executed between the Houlton Band of Maliseet Indians, a sovereign Federally recognized government and the United States Environmental Protection Agency (US EPA) in order to better achieve mutual environmental-governmental goals in the government-to-government relationship between the Houlton Band of Maliseet Indians, a sovereign government, and the US EPA. This Agreement provides the framework for a relationship in support of the President's April 29, 1994, directive and the Administrator's Indian Policy of 1984 and July 1994 on the government-to-government relationship which respects the governmental sovereignty of the Houlton Band of Maliseet Indians and all of the authorities and powers vested in its duly elected Chief and Council and the US EPA including its Federal trust responsibility with Federally recognized Indian Tribes. This Agreement provides a framework for implementation of procedures and practices insuring implementation of that relationship between the Houlton Band of Maliseet Indians and the US EPA.

Each party to this Agreement respects the unique legal status of the other party including the sovereignty of the Houlton Band of Maliseet Indians and the United States Environmental Protection Agency. The U.S. Environmental Protection Agency recognizes and respects the values and culture represented by the Houlton Band of Maliseet Indians.

To fulfill the intent of this Agreement, the Administrator's Representative, the Regional Administrator of EPA will identify and seek to remove impediments to working directly and effectively with the Houlton Band of Maliseet Indians.

II. PARTIES

The parties to this Agreement include the US EPA represented by its Regional Administrator, and the Houlton Band of Maliseet Indians, represented by its Chief. This Agreement provides a framework for a government-to-government relationship between the US EPA and the Houlton Band of Maliseet Indians.

III. PURPOSES AND PRINCIPLES

This Agreement confirms the commitment by the parties to implement a government-to-government relationship, to promote and build strong environmental protection in Indian Country. This relationship respects the sovereignty of the Houlton Band of Maliseet Indians and the United

States, represented by the US EPA. This Agreement further enhances and improves communications between the parties and facilitates resolution of issues of common concern.

This Agreement is intended to build confidence and trust between the parties in the government-to-government relationship outlining the process for implementing this Agreement. Not only is this process to implement an Agreement, but also it is intended to "institutionalize" the spirit and principles within the organizations represented by the parties.

This Agreement also commits the parties to the initial task that will translate the government-to-government relationship into more efficient and improved actions including short and long term planning and program implementation affecting the interest of the Houlton Band of Maliseet Indians. This agreement encourages and provides the foundation and framework for specific agreements between the parties outlining specific tasks to address or resolve specific issues of common concern. The EPA Administrator has also convened the Tribal Operations Committee; comprised of EPA Senior Management and Tribal Leaders, which has the mission to advance the protection and improve the conditions of Tribal health and the environment in Indian Country. This Agreement commits the parties to work to complete the implementation of Tribal Operations Committee recommendations, including distribution of authorities and resources to Tribes.

All principles including the Agency's Indian Policy will apply including the Trust responsibility of the Agency and the promotion of stable funding, employment, capacity-building, infrastructure development and other factors for long-term program implementation including the transfer of "state of the art" technologies. The Houlton Band of Maliseet Indians recognizes that US EPA has certain technical knowledge that would be helpful to tribes in their environmental decision making process. Conversely, US EPA recognizes that the Houlton Band of Maliseet Indians' cultural/traditional ecological knowledge and expertise can be helpful in their decision making process. US EPA recognizes and respects tribal environmental decisions made based on traditional knowledge and will incorporate this knowledge, as appropriate, in the Agency's decision making processes.

This Agreement will remain flexible in addressing the tribe's needs as appropriate and ensure common sense approaches. Environmental justice principles will be used in EPA's decision making processes, including placement of a high priority on tribal cultural concerns such as subsistence needs and traditional practices and uses of natural resources.

The parties recognize that implementation of this Agreement will require a comprehensive educational effort extending to all offices within the regional offices to promote the understanding of the unique relationship between both parties and the government-to-government relationship affirmed in this Agreement.

IV. GOALS, IMPLEMENTATION PROCESS AND RESPONSIBILITIES

A purpose of this Agreement is to ensure that the Houlton Band of Maliseet Indians has access to

resources to participate fully in all proceedings related to implementation of the Houlton Band of Maliseet Indians/EPA Agreement. Goals, objectives and work plans relating to implementation of the principles of the Agreement are identified and attached as part of this agreement.

The parties recognize that a key principle of this relationship is a requirement that the individuals working to resolve issues of mutual concern are accountable and act in a professional manner consistent with the Agreement.

EPA New England shall perform in accordance with the principles of this Agreement, as well as the laws and Treaties of the United States. The Houlton Band of Maliseet Indians is a unique governmental organization, federally recognized and operating under Tribal laws, and treaties. The Houlton Band of Maliseet Indians is governed by its Chief and Tribal Council, who are elected by the Tribal Members through the Tribal election process, certified by the Tribal Clerk.

The parties to this Agreement recognize that issues of mutual concern will be effectively addressed through communication that is clear, direct, and between persons authorized and responsible for addressing the concern.

The parties recognize that natural laws coupled with cultural/spiritual understanding determine the tribe's approach to tribal ecosystems and the environment.

The Houlton Band of Maliseet Indians and US EPA recognizes that a system of accountability within each other's organization is critical to the successful implementation of this Agreement. Therefore, the Chief and/or his designee and the US EPA Regional Administrator will direct appropriate staff to follow the principles and guidelines of the Agreement, in working with corresponding representatives.

In order to successfully implement this Agreement, the Houlton Band of Maliseet Indians and the US EPA will ensure that its organization, decision-making process and relevant personnel are known by the parties to the Agreement.

EXHIBITS, Goals and Work Plans for annual and multi-year specific work plans reflecting the action plans of the Houlton Band of Maliseet Indians are attached and a significant part of this Agreement.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and the Houlton Band of Maliseet Indians. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of the Houlton Band of Maliseet Indians when carrying out its responsibilities that may affect tribal lands. In furtherance of its trust responsibilities and to assist accomplishment of the Houlton Band of Maliseet Indians long-term environmental goals, EPA currently plans to provide the assistance described in the attachments. The activities in the attachments are not intended to be an all-encompassing description of EPA's responsibilities. In addition, EPA's assistance activities

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may change. EPA provides this description of its planned activities in order to assist the Tribe in its strategic planning over the coming years.

The parties to this Agreement will meet on a semi-annual basis to review implementation of this total Agreement, to identify obstacles to implementation as well as progress in implementation, to identify a plan of correction, to review past goals and to identify future goals for future years.

V. COMMUNICATION AND CONFIDENTIALITY

The parties agree that in support of their common interests, documents and other information generated by the parties in furtherance of the U.S. EPA's trust and statutory responsibilities may be shared between the parties. The U.S. EPA agrees to coordinate and consult with the Tribe on environmental matters that may impact upon the Tribe, and the Tribe agrees to provide views, advice, comments, recommendations, evaluations and other assistance as requested by the U.S. EPA to assist it in the performance of its duties.

The parties agree to protect, to the greatest extent permitted by law, communications in their possession which have been exchanged between the U.S. EPA (and any of its subdivisions or contractors), other Federal agencies and the Nation, and between the parties' technical representatives (including any attorneys and consultants to the U.S. EPA and other Federal agencies, or the Nation). The communications will be treated confidentially and specifically include those used by the U.S. EPA in the deliberative and decision-making processes necessary to carry out its statutory functions and responsibilities. The U.S. EPA will make its best efforts to protect all such communications, including those that predate this agreement, that are requested under the Freedom of Information Act. The Tribe also agrees to make its best efforts not to disclose to the public those communications which are in its possession.

This agreement does not create, change or alter any rights of the parties, nor does it create an independent right subject to judicial review.

VI. SOVEREIGNTY AND DISCLAIMERS

Each of the parties respects the sovereignty and legal status of the other party. In executing this Agreement, neither party waives any rights, including treaty rights, sovereign immunities, jurisdictions or other laws or legal actions protecting the status of each party. It is understood that this Agreement does not create or alter existing law or the legal status or authority of either party. Through this Agreement the parties strengthen their collective ability to successfully resolve issues of mutual concern.

The relationship described in this Agreement provides increased ability to solve problems and may not result in resolution of all issues. Therefore, inherent in this relationship is the right of each party to evaluate an issue of importance to any decision-making authority of another party, including taking legal action.

Signatory parties have executed this Agreement on June 07, 1999, and agreed to be duly bound by its commitments.

Houlton Band of Maliseet Indians:

U.S. Environmental Protection Agency

Brenda Commander

John DeVillars

BY: Brenda Commander

BY: John DeVillars

TITLE: Chief

TITLE: Regional Administrator

DATE:

DATE:

April 15, 1999

Fact Sheet - Page 4

ME0000175

Total	872	100%	1100
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EPA finds that the new TMP process is not a New Source under 40CFR122.29, however, the ME DEP has determined, as a state certification requirement under Best Professional Judgement, that NSPS effluent guidelines are to be applied to the TMP portion of final paper production. EPA effluent guidelines for the above production where the TMP production is guided by New Source Performance Standards is as follows:

Subpart	1100 t/d Paper from Pulp ADT/ D	Monthly Avg BOD		Max Daily BOD		Monthly Avg TSS		Max Daily TSS	
		Eff Gdl kg/kg	Allow #/day	Eff Gdl kg/kg	Allow #/day	Eff Gdl kg/kg	Allow #/day	Eff Gdl kg/kg	Allow #/day
G (TMP)	682	2.5	3410	4.6	6274	4.6	6274	8.7	11867
I (News)	385	9.4	7238	18.1	13937	12.95	9972	24.05	18519
K (Wood)	33	4.25	281	8.2	541	5.9	389	11.0	726
Total	1,100		10,929		20,753		16,635		31,111

RECEIVING WATER QUALITY CONDITIONS

Maine's 1996 Water Quality Assessment (Section 305(b) Report) indicates that the West Branch Penobscot River below GNP - East is in attainment of all standards for the assigned classification.

PENOBSCOT INDIAN NATION

This permit regulates a discharge which may impact the natural resources of an Indian tribe downstream. Consistent with EPA's trust responsibility to federally-recognized tribes, EPA has consulted with the tribe regarding potential impacts to tribal resources. In addition, EPA's trust responsibility requires the Agency, consistent with Agency authorities, to insure that this permit protects tribal rights to resources that may be impacted by the discharge.

WATER QUALITY

Water Quality Models were established for the lower Penobscot from Old Town to Bucksport (Waste Load Allocation for the Lower Penobscot River, ME DEP, Mitnik, 1986) and the West Branch from Millinocket to Medway (West Branch Penobscot Waste Load Allocation, ME DEP, Allen, 1988). In 1991, both of these models were linked and one continuous model was developed from Millinocket to Bucksport (Penobscot River Basin Waste Load Allocation, ME DEP Mitnik, 1991). The ME DEP is currently working toward better calibration of the model by doing additional sampling and refining hydraulic data. Presently the DO/BOD model estimates that DO standards are met for the discharge of BOD from GNP East as previously permitted and licensed at 6,200 and 10,530 lbs/day (Step 1 after Deink went on line in 1993).

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Attachment

12

EPA's Position on the TEAs

Purpose of the TEAs: The TEAs are a planning tool, designed to outline the tribes' hopes for developing their capacity to protect their environment consistent with EPA's 1984 Indian Policy. In many respects they express aspiration, and not necessarily a concrete plan for action. EPA has developed TEAs for most federally-recognized tribes across the country, not just in Maine.

Legal Status of the TEAs: The TEA's do not change anything about a tribe's status under federal law. EPA specifically conditions its performance under the TEA on "the laws and Treaties of the United States," so the TEAs in no way expand or contract whatever legal authority the tribes retain under MICSA. Also, the TEA's have no legal bearing on the Maine NPDES application. The TEAs speak to the tribes' hope to implement their own environmental programs; Maine's NPDES application is about the State's authority to run a program in Indian territory.

"Sovereignty" and the TEAs: Recognizing the Maine tribes as "sovereign" is a simple acknowledgment that each tribe has an established governing body which acts to further the interests of the tribal members.

State Communications: The TEAs do not affect State programs, and EPA did not coordinate the TEAs with the States.

Confidentiality and the TEAs: The TEAs do nothing more than acknowledge to the tribes that consultations with EPA will stay confidential to the extent allowed by law. If EPA cannot establish a basis under federal law for withholding material it receives from a tribe, nothing in the TEA changes EPA's obligation to release that information.

For further questions: contact Tim Williamson 617-918-1099

[illegible]

Attachment

13

TEMPLATE FOR EPA/TRIBAL ENVIRONMENTAL AGREEMENTS

March 17, 1995

PREAMBLE/INTRODUCTION

On July 14, 1994, the EPA Administrator issued an Action Directive to the Agency which called for prompt action under nine specific areas that would enhance Tribal environmental operations. One such area was the development of Tribal specific "workplans" to be established between the Regions and the Tribes. These plans were to allow for maximum flexibility so that Tribal specific needs could be accommodated. During initial deliberations on how to move forward with these plans, it was decided that rather than being "workplans" these were more appropriately defined as "Agreements".

Further, in order to promote consistency between the various Regional approaches, the following Template was developed as a tool for establishing Agreements. The Template was developed based on discussions between EPA and Tribal representatives to the Tribal Operations Committee.

EPA/TRIBAL AGREEMENT -- TEMPLATE

The following Agreement entered into by EPA and (Name of Tribe), is intended to serve as a planning tool which can clearly identify the Tribe's environmental objectives, expected outcomes, expectations for resources, as well as, implementation and management assistance from EPA. This Agreement should establish the Tribes environmental objectives over the next 3-4 years, but should be viewed as a flexible document that can be changed to meet Tribal need. It will be revisited periodically to keep it current, expand it into the future and to review progress.

PURPOSE FOR ESTABLISHING EPA/TRIBAL AGREEMENTS

1. To promote strong environmental protection in Indian country including Alaska Native lands.
2. To implement the Agency policy which promotes a government-to-government relationship and recognition of Tribal sovereignty in environmental protection of treaty resources.
3. To provide an understanding of Tribal environmental need and to identify the areas under which each Tribe intends to assume program responsibility. (Help address jurisdictional issues.)

4. To cooperatively develop, implement, and maintain comprehensive Tribal environmental programs that include a full range of environmental programs.
5. To build environmental capacity in order for Tribes to operate programs over the long run.
6. To identify areas where EPA will need to plan for and carry out direct implementation.
7. To include Tribes in Agency planning while addressing specific Tribal problems and other matters of concern to Tribes.
8. To build equal partnerships and work collectively as Tribes establish priorities for environmental protection.
9. To enhance and foster communications between EPA and the Tribes and to clarify expectations.

GUIDING PRINCIPLES

In establishing this Agreement the following principles are agreed to:

1. As these Agreements are developed, all principles included in the Agency's Indian Policy shall apply. This includes recognition of a trust responsibility for environmental protection, government-to-government relationship, and Tribal sovereignty.
2. The Government-to-Government Relationship shall be directly between EPA and (Name of Tribe.)
3. The Agreement shall be implemented to promote stability in funding, employment, capacity building, infrastructure development and other such factors that lead to long-term program implementation for the Tribe.
- ④ These Agreements are being developed with the understanding that the long-term goal is to address, implement and maintain, where deemed necessary by the Tribe, the full range of EPA's activities and programs.
5. While implementing this Agreement, the Agency is committed to on-going, timely and open communications with the Tribe. All efforts will be made to provide timely advice on available grants and other sources of available funding, training and on-going meetings that affect Tribes.

This also includes a timely transfer of state of the art technology as the Tribe seeks to build capacity.

6. This Agreement is intended to promote flexibility while addressing the needs of the Tribe and can be revisited as appropriate to ensure common sense approaches.
7. The principles of environmental justice shall apply to this Agreement. In general these principles call for the Agency to assure that Tribes are afforded all of the opportunities afforded States, including procedures for Tribal participation into Agency decision making. In addition, environmental justice principles call for a recognition of Tribal cultural concerns such as subsistence needs and traditional uses of natural resources.

GENERAL AGREEMENT ON REGIONWIDE TRIBAL ISSUES

The following factors have been identified as issues that all Regions are experiencing and a Regional approach is need to address them in this Agreement:

1. Emergency response;
2. Grant flexibility;
3. Process for communication;
4. A method for monitoring progress;
5. Resolution of issues that arise where State and/or Tribes have not demonstrated adequate jurisdiction; and
6. Language to ensure that the trust responsibility is adhered to.

PLANNING AND BUDGET CYCLES

1. Identify resources needed from EPA in an aggregated format including: dollars, workyears, travel, (include a menu of resources.)
2. Identify schedule for submitting grant applications and other such planning information.
3. Identify how stable source of funding will be provided including resources from EPA and from the Tribe. Project specific funding can be used to get started, but sources of long-term program implementation funding should be identified.
4. Explain in detail the linkage between long-term goals and short-term resource needs so that the Agency can pursue adequate resource needs to assist with these longer-term objectives, without focusing on the year-to-year fluctuations on the budget.

5. Updated key information for national budget development on rolling schedules should be submitted annually based on the Agreement while maintaining key activities that lead to fulfillment of longer term goals.

(NAME OF TRIBE)/EPA SPECIFIC ACTION PLAN

1. Describe Tribe's goals, objectives and desired outcomes.
2. Identify short-term resource needs (FY 95 & 96).
3. Identify long-term goals through (FY 98) if possible.
4. Identify goals for program assumption and the year in which the Tribe intends to apply for program assumption.
5. Identify direct implementation needs from EPA.
6. Provide methods for implementing the program -- including enforcement on the reservation and for treaty resources of the reservation. This would include an identification of contributions made by EPA, Tribe and other Federal agencies. Areas in which the Tribe may wish to pursue working with the State and with Tribal consortia may be included.
7. List specific Tribal priorities in addition to general program assumption such as developing Tribal codes, carrying on monitoring, developing a profile of Tribal resources, etc.....
8. Identify training the Tribe feels it needs to help with program implementation.
9. Define the Tribe's cultural, resource, and technical expertise, including current staffing and future staffing needs.
10. Provide a method for monitoring progress.

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all Thirteen Colonies in the Revolutionary War, the people of Maine have again shown themselves to be an example of us all, by working together, by acting with patience and fairness and understanding. This should be a proud day for everyone who was involved in this effort, many of whom are here today—the tribes, who placed their trust in the system that has not always treated them fairly, the leaders of the State of Maine who came openly to the bargaining table, the landowners who helped make the settlement a reality by offering land for sale that they might not otherwise have wanted to sell, the Members of Congress who realize the necessity of acting, and all the citizens of Maine who have worked together to resolve this problem of land title.

And now it's with a great deal of pleasure that I, as President of our country, sign into law this bill, which settles once and for all in a fair and equitable manner a dispute that has concerned all of us over many years.

[At this point, the President signed the bill.]

I think I'll let a few of the people comment if you all have just a brief period of time. Governor, would you say a word first?

GOVERNOR BRENNAN. Mr. President, I wish to thank you and commend you and your administration for a superb response to solving the most difficult problem that has faced Maine in its history. By virtue of the efforts of your administration in the signing of this bill, an economic cloud has been removed from Maine, and the opening of a new relationship between Indians and non-Indians will begin.

Thank you very, very much.

THE PRESIDENT. Senator?

SENATOR MITCHELL. Well, I'd just like to add my thanks to those of the Gov-

ernor, Mr. President. This is but one example of your responsiveness to the problems of the people of Maine that has existed since you took office. With Loring Air Force Base, the Bath Iron Works, this settlement, your prompt response to the Governor's request last week for disaster recognition for the Maine Coast demonstrated a concern and responsibility in dealing with the problems of the citizens of Maine. And I know everybody in Maine is deeply appreciative of that and very thankful to you.

Thank you.

THE PRESIDENT. Ed, would you like to say a word?

SECRETARY MUSKIE. Mr. President, as I contemplate the history of this complicated problem, I can only think of one appropriate word to say. Amen. [Laughter]

THE PRESIDENT. Well, I'll let you choose someone to represent the Indian tribes, if you don't mind. Tom?

MR. TUREEN. I don't know why I get chosen.

THE PRESIDENT. You're chosen.

MR. TUREEN. Mr. President, we thank you. It's a problem not just for these tribes but for our whole system. If it hadn't been for your courage, who knows what would have happened in these cases. There's a temptation to turn your back on what was right, and you resisted that, and we'll all be appreciative.

Thank you very much.

THE PRESIDENT. I might say as a personal note that this is one of the most difficult issues I've ever gotten involved in. I've aroused the animosity and the criticism of almost everyone—[laughter]—at least for transient periods of time. But I felt it was my responsibility, as President representing all the people of this country, to stay with it, and I imported a very fine

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and distinguished jurist from Georgia to help me with it. And I think that his basic recommendation and the courage of all those here to face a difficult issue headon has resulted in a settlement that's gratifying to everyone involved.

Again, I want to thank all of you for coming here. I think the people of Maine have responded well to a very difficult and potentially permanently divisive issue in your State. And I think that the final resolution has been a credit to our system of government.

SECRETARY MUSKIE. Mr. President, if I may mention one other person who is not to be forgotten, who can't be with us, and that's Governor Jim Longley—

THE PRESIDENT. Absolutely.

SECRETARY MUSKIE.—who really fought for Maine's best interests, who persisted with you. And I think his involvement and contribution ought to be recognized.

MR. PRESIDENT. Thank you, Ed, very much.

NOTE: The President spoke at 3:56 p.m. in the Cabinet Room at the White House.

As enacted, H.R. 7919 is Public Law 96-420, approved October 10.

Ronald Reagan

Informal Exchange With a Reporter on
Departure for Camp David.
October 10, 1980

Q. Mr. President, did you mean to suggest that Reagan is untrustworthy in your interview?

THE PRESIDENT. Very trustworthy.

NOTE: The President was asked the question as he departed from the South Portico of the White House at 4:00 p.m.

Cuban and Haitian Entrants

Executive Order 12246. October 10, 1980

By the authority vested in me as President of the United States of America by Section 501 of the Refugee Education Assistance Act of 1980 and Section 301 of Title 3 of the United States Code, and in order to provide for assistance to be made available relating to Cuban and Haitian entrants, it is hereby ordered as follows:

1-101. All the functions vested in the President by Section 501(c) of the Refugee Education Assistance Act of 1980, are hereby delegated to the Secretary of State.

1-102. In carrying out the functions delegated to him by this Order, the Secretary of State shall ensure that among the actions he takes or directs from time to time, he shall promptly take action which provides assistance for those Cuban and Haitian entrants located or to be located at Fort Indiantown Gap, Fort McCoy Fort Chaffee, Fort Allen, existing processing and reception sites in Florida, and such other sites as he may designate.

JIMMY CARTER

The White House,
October 10, 1980.

[Filed with the Office of the Federal Register,
11:16 a.m., October 14, 1980]

NOTE: The Executive order was released on October 11.

National Lupus Week, 1980

Proclamation 4799. October 10, 1980

By the President of the United States
of America

A Proclamation

Systemic lupus erythematosus (also known as lupus) is a chronic

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a world where people could live together with feelings of security, equal opportunity, justice and peace, and I feel that this site is not only a symbolic representation of all that Martin stood for and the representation of his dream, but it is in fact a beginning where we can demonstrate what can happen in a small way. This will become a model community, I believe, Mr. President. We want to thank you.

THE PRESIDENT. Thank you very much. And, of course, the other bill is for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and of course, the Wilberforce Center, the National Center for the Study of Afro-American History and Culture. It's a great pleasure for me to do this. I know that in our lifetime we've seen the need for Americans to remember the exciting but sometimes torturous path that our country has played toward achieving equality of opportunity and realizing the dream that existed in the hearts and minds of those who founded this country. And I'm very glad to be present on this historic occasion.

[At this point, the President signed H.R. 7434.]

We've got two new laws now. I think Representative McLin might want to comment on the Wilberforce—

REPRESENTATIVE McLIN. Well, Mr. President, especially those of us in Ohio who have worked long and hard to try to get the National Museum Centers established, we appreciate it. I think this will be a lasting compository and repository for Afro-American history and culture; long we have needed such a place that we can have a center that we can place those historical items in. And on behalf of the Afro-American and Dr. Taylor and Dr. Newsom of both Central State and

Wilberforce University, we want to thank you very much and Congress for carrying this law past.

Thank you very much.

THE PRESIDENT. Thank you very much, Representative McLin.

And now I'd like to ask Byron Rushing, the president of the Museum of Afro-American History in Boston, to say a word.

MR. RUSHING. In 1790, when the first census was taken in this country, Massachusetts was the only State in the Union that had no slaves, and so this community that we are preserving in this act is truly the oldest free black community in the United States. And the center part of the 16 sites that will be preserved by this act is the African Meeting House, which is now the oldest black church building still standing in the United States. For various reasons we are very proud that all of that happened in Boston, Massachusetts.

We're also very proud that our Congressman Joe Moakley and our Senator Paul Tsongas understood the importance of this legislation and moved very effectively to have it passed. We want to especially thank at this time, not only our own, of course, inhouse supporters, our board members and all those people who love us dearly, but especially the staff of the National Park Service. And I think of two names that come out immediately, and that's Ira Hutchinson and Bob Nunn, who I don't think is here today, who just did a tremendous job in helping us in this legislation. And I want to thank you very much, Mr. President, for signing this.

THE PRESIDENT. Thank you very much.

Well, I was going to call on Cecil Andrus to say a final word representing the administration, but as usual, he's quite

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modest. He does the work, shepherds the legislation through the Congress, works very closely with his subordinates in the Interior Department, also cooperates completely with private and public officials in the local and State government and with those who are interested in the improvement of our country. And I want to express my deep thanks to him, my confidence that in his Department, the true intent of the Congress and the highest ideals to these two bills will be carried out to the fullest. Cecil, thank you again along with those others assembled here.

Thank you very much, everybody. Have a good day.

NOTE: The President spoke at 3:35 p.m. in the Cabinet Room at the White House.

As enacted, H.R. 7218 is Public Law 96-428, and H.R. 7434 is Public Law 96-430, both approved October 10.

Maine Indian Claims Settlement Act of 1980

*Remarks at the Bill Signing Ceremony,
October 10, 1980*

THE PRESIDENT. Governor Brennan and Secretary Muskie, Senator Mitchell, representatives of the Passamaquoddy and the Penobscot and Maliseet Tribes:

This is indeed a culmination of a great deal of effort on behalf of everyone in this room—and a lot of those who are not assembled here today because the room is not large enough to hold those who have worked on this important legislation. This is also a great day for all the people of Maine, for the Indian tribes involved, for Maine's landowners, and also a good day for the Congress of the United States, because they are all satisfied with the settlement act. Because we have a settlement

act, rather than lengthy and extremely costly litigation, a mutual consent agreement, rather than acrimonious debate and further division among the people of Maine, it's a good day for me as President as well.

When I first came to office in 1977, I was determined to help resolve the uncertainty surrounding the land ownership question in Maine. It was an intolerable situation. On the one hand, the Federal Government had failed to live up to its responsibility to the Maine Indians. On the other hand, the citizens of Maine were subjected to fear and uncertainty about the title to land they considered to be their own. The Federal Government owes a special responsibility to all the people of Maine, of course, Indian and non-Indian, to settle this claim.

In 1977 I appointed a very distinguished former Georgia Supreme Court Justice, William Gunter, to evaluate the claims and advise me on an appropriate course for the Federal Government to follow. At his suggestion, we appointed a working group which undertook extensive negotiations with the tribes and with the representatives of various landowners in the State of Maine. These negotiations have paved the way for a satisfactory out-of-court settlement of what might otherwise have been a lengthy and costly and bitter lawsuit.

The settlement authorizes a permanent land base and trust fund for the tribes and also resolves once and for all the title to the land for all the people who reside in Maine. The settlement act does something else as well. It's a reaffirmation that our system of government works.

A hundred and ninety years after the Passamaquoddy and Penobscot Indians and Maine settlers fought side by side to protect Maine's borders and help defend